

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
300 Capitol Mall, 17<sup>th</sup> floor  
Sacramento, California 95814

NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING

RH-01013338

DATE: July 26, 2002

SUBJECT OF HEARING:

A hearing will be held regarding the permanent adoption of emergency regulations pertaining to clerical activities, activities involving clerical changes to insurance policies, and indirect marketing and servicing support activities exempt from insurance producer licensure. The Insurance Commissioner ("Commissioner") adopted the regulations on an emergency basis as ER 01013139, effective June 17, 2002. The regulations are codified in Title 10, Chapter 5, Subchapter 1, Article 10, Sections 2193 through 2193.3, California Code of Regulations.

HEARING DATE AND LOCATION:

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present oral or written statements or arguments relevant to the adoption of these regulations as follows:

Date and Time: September 23, 2002 at 10:00 A.M.

Location: S.F. Civic Center Complex Conference Center  
455 Golden Gate Avenue, Hearing Room 9  
San Francisco, California

AUTHORITY AND REFERENCE:

The Commissioner proposes the adoption of these regulation pursuant to the authority provided in Section 8 of Assembly Bill 393, Chapter 321, Statutes of 2000 ("AB 393"). The purpose of these regulations is to implement, interpret, and make specific

the provisions of California Insurance Code ("CIC") Sections 1631 and 1635.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS AND CONTACT PERSON:

All persons are invited to present oral and/or written comments on the regulations at the scheduled public hearing. The Commissioner requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Written comments not presented at the hearing should be addressed to the following contact person:

Steven Suchil, Senior Staff Counsel  
California Department of Insurance  
300 Capitol Mall, 17th Floor  
Sacramento, California 95814  
Telephone: 916-492-3500

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

Elaine LaFrance, Staff Counsel  
California Department of Insurance  
300 Capitol Mall, 17th Floor  
Sacramento, California 95814  
Telephone: 916-492-3500

DEADLINE FOR WRITTEN COMMENTS:

All written materials, unless submitted at the hearing, must be received by the Commissioner, c/o the contact person at the address listed above, no later than 5:00 P.M. on September 16, 2002. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: suchils@insurance.ca.gov. The Commissioner will also accept

written comments transmitted by telephone facsimile provided that they are sent to (916) 324-1883. Comments sent to other e-mail addresses or to other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.

#### ACCESS TO HEARING ROOMS:

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person listed above in order to make special arrangements, if necessary.

#### ADVOCACY OR WITNESS FEES:

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Subchapter 4.5, Title 10, of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address, in order to inquire about the appropriate procedures:

Office of the Public Advisor  
California Department of Insurance  
300 Capitol Mall, 17th Floor  
Sacramento, California 95814  
(916) 492-3500

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the above listed contact person. Please contact the Office of the Public Advisor for further information.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

AB 393 amended the regulatory and licensing scheme for insurance agents/brokers. Under CIC Sections 1631 and 1635, as amended by AB 393, persons cannot solicit, negotiate, or effect contracts of insurance unless licensed by the Commissioner to act in such capacities.

CIC Section 1635 specifies certain exemptions from insurance agent/broker licensure. CIC Section 1635, subdivision (l), added by AB 393, states that licensure as insurance producers is not required for insurer or producer officers, directors or employees whose executive, administrative, managerial or clerical activities are indirectly related to soliciting, negotiating or effecting the sale of insurance. Subdivision (m) of CIC Section 1635, also added by AB 393, states that licensure as insurance producers is not required for employees whose activities are limited to making clerical changes to existing insurance policies or providing indirect marketing and servicing support to determine general interest in insurance products. Section 8 of AB 393 requires the Commissioner to adopt regulations to implement the bill.

New regulation Sections 2193, 2193.1, 2193.2 and 2193.3 implement, interpret, and make specific the provisions of CIC Sections 1631 and 1635(1) and (m).

#### Section 2193: Definitions

New Section 2193 sets forth two definitions for new Article 10, which will provide the activities exempt from licensure by the Commissioner as insurance producers - agents, brokers or solicitors - under Chapter 5, Part 2, Division 1 of the CIC. "Licensee" is defined to mean those persons licensed by the Commissioner to act as insurance producers under Insurance Code Sections 1621 through 1624. Conversely, "unlicensed person" is defined to mean a person not so licensed.

#### Section 2193.1: Clerical Activities Exempt From Insurance Producer Licensing

CIC Section 1635(1) states that insurance producer licensure is not required for insurer or producer officers, directors or employees whose executive, administrative, managerial or clerical activities are indirectly related to soliciting, negotiating or effecting the sale of insurance. New Section 2193.1 provides those clerical activities indirectly related to the solicitation, negotiation or effecting sale of insurance exempt from licensure.

Under new Section 2193.1 clerical activities exempt from licensure include, but are not limited to: distribution of brochures, business cards, or other general information advertising insurers, insurance agencies, or insurance products, services or promotions; preparing insurance coverage

applications; obtaining information from persons other than the insureds or applicants for coverage; and, preparation of insurance related documentation under the supervision of producer licensees and for the review and signature of licensees.

Section 2193.2: Activities Involving Clerical Changes to Insurance Policies and Indirect Marketing and Servicing Support Exempt From Insurance Producer Licensing

CIC Section 1635(m) states that insurance producer licensure is not required for employees whose activities are limited to making clerical changes to existing insurance policies or providing indirect marketing and servicing support to determine general interest in insurance products.

Under new Section 2193.2 the activities exempt from insurance producer licensure involving making changes to existing insurance policies or providing indirect insurance marketing and servicing support include but are not limited to: dissemination of insurance buyers' guides, coverage applications, and other forms in response to consumer requests; receiving or recording information from customers; scheduling appointments with producer licensees; communicating with customers to obtain factual information requested by producer licensees; accepting insurance premiums to deliver to producer licensees; receiving and recording insureds' requests for additions or deletions to existing policies and preparing endorsement forms for the signatures of producer licensees; informing insureds, in response to their inquiries, as to existing policy information, including financial limits, premium balances due, and effective coverages; answering the telephone, receiving faxes and other general secretarial or administrative functions; and, foreign language translation between producer licensees and customers.

Section 2193.3: Activities Requiring Licensure as an Insurance Producer

CIC Section 1631 provides that persons cannot solicit, negotiate or effect insurance contracts, or act in the capacities of insurance agents, life agents, insurance brokers or insurance solicitors, unless licensed by the Commissioner to act in such capacities.

New Section 2193.3 implements CIC Sections 1631 and 1635 by stating those activities which are not exempt from licensure

because they are directly related to the solicitation, negotiation or effecting the sale of insurance.

The activities for which insurance producer licenses required are: explaining or interpreting, and offering of opinions or recommendations on, insurance coverages, exposures, limits, premiums, rates, deductibles, payment plans, or other insurance contract terms; recommending, advising or urging customers to purchase particular insurance policies or to insure with particular companies or insurers; and, binding insurance coverages.

#### MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS:

The regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

#### COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING:

The Commissioner has determined that there will be no non-discretionary costs, or savings to any local agency, state agency or school district from the regulations, and that the regulations will not affect federal funding to the State.

#### ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:

The Commissioner has made an initial determination that the regulations may not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states. AB 393, Section 8, however, requires the adoption of these regulations pertaining to exemptions from insurance agent/broker licensure. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals.

POTENTIAL COST IMPACT ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:

The Commissioner is required to assess any effect these regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in this state. The Commissioner does not foresee that the proposed regulations will have an effect on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS:

The regulations will have no significant effect on housing costs.

ALTERNATIVES:

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations. Section 8 of AB 393, however, requires the adoption of regulations to implement the bill.

IMPACT ON SMALL BUSINESS:

The Commissioner has determined that the proposed regulations may affect small businesses. Section 8 of AB 393, however, requires the adoption of regulations to implement the bill.

COMPARABLE FEDERAL LAW:

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:

The Department has prepared the express terms of the regulations and an initial statement of reasons that sets forth the reasons for the regulations. Upon written or e-mailed request, the regulations and initial statement of reasons will be made available for inspection and copying. Written requests for the regulations and initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

Upon written or e-mailed request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, any information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying by prior appointment at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING:

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

POSTING ON CDI WEBSITE:

Documents concerning this proceeding are available on the Department's website at <http://www.insurance.ca.gov>. To access this information, find the major heading "Protecting Consumers". In this section, scroll down to the subheading "Be

Informed". Click on the "Search for Proposed Regulations" link. When the search field appears, enter "RH01013338", CDI's regulation file number for these regulations. Alternatively, search for the CIC section number that the regulations implement - for instance, "1635", or search by key word, "broker-agent licensing exemption", or "clerical exemption". Then, click on the "Submit" button to display links to the various documents pertaining to this filing.

MODIFIED LANGUAGE:

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated: July 26, 2002

HARRY W. LOW  
Insurance Commissioner

By /s/

STEVEN SUCHIL  
Senior Staff Counsel

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